

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SMILEY J. HARRIS

Plaintiff,

v.

BUSINESS, TRANSPORTATION AND
HOUSING AGENCY, et al.,

Defendants.

No. C 07-0459 PJH

**ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND; ORDER DENYING
REQUEST TO PROCEED IFP; ORDER
DENYING MOTION FOR PRELIMINARY
INJUNCTION; ORDER VACATING CASE
MANAGEMENT CONFERENCE DATE**

Plaintiff Smiley J. Harris filed this action on January 23, 2007, and also filed a request for leave to proceed in forma pauperis ("IFP"), and a motion for preliminary injunction. On April 2, 2007, plaintiff filed an amended complaint, adding allegations of facts that have occurred since the filing of the original complaint, and also adding two new causes of action.

Because the court finds that the complaint must be DISMISSED pursuant to 28 U.S.C. § 1915(e) for failure to state a claim, the request to proceed IFP is DENIED.

Because plaintiff has not met the standard for issuance of injunctive relief, the motion for preliminary injunction is DENIED.

BACKGROUND

The following statement of facts is based on the allegations in the first amended complaint. Plaintiff is a resident of Lake County, California. He was ordained as a minister in the Universal Life Church in 1999, and subsequently became minister to a congregation known as the "CHURCH OF THE GREATER FAITH AND REDEMPTION." He asserts that this congregation forbids the use or possession of social security numbers, based on the

1 belief that the social security number is a component of the "Mark of the Beast."

2 Based on a desire for "Oneness with the One God," plaintiff determined to "revoke
3 and/or rescind all preexisting contracts with the United States Government;" and filed notice
4 with Lake County to that effect in December 2000. In March 2001, plaintiff filed two
5 affidavits in the Lake County Superior Court, one announcing his intention to surrender his
6 driver's license, and one indicating his intention to revoke his birth certificate. In May 2001,
7 plaintiff sent the Lake County Superior Court an affidavit regarding "a Freeman's Right to
8 Travel," and a notice of "Intent of Traveler at Law."

9 In June 2001, plaintiff purchased an automobile. Three days later, he returned the
10 automobile's license plates and registration to the California Department of Motor Vehicles.
11 In December 2001, plaintiff, who claims he was in possession of an "International Driver's
12 Permit," was arrested by the Lake County Sheriff's Department for driving without
13 registration, insurance, or license. His automobile was towed. In January 2002, plaintiff
14 accepted an offer of probation from the court, and re-applied for a California driver's
15 license.

16 In November 2002, plaintiff received a citation from the California Highway Patrol,
17 and his International Driver's Permit was seized. In December 2002, plaintiff was issued a
18 citation by Officer Chris Macedo of the Lake County Sheriff's Department. He was cited for
19 violation of California Penal Code § 148(a)(1) (resisting arrest), and for violation of
20 California Vehicle Code §§ 22350 (driving over the speed limit), 12951(a) (failure to
21 possess a driver's license), and 16028(a) (no proof of financial responsibility). He was
22 arrested and jailed, and his automobile was impounded. Plaintiff was released on bail after
23 spending four nights in jail. Some of the charges were subsequently dismissed, although
24 plaintiff was convicted of the charge of driving over the speed limit.

25 In January 2003, the court revoked plaintiff's probation, based on evidence that
26 plaintiff had violated the terms of his probation. In February 2003, plaintiff was arrested
27 and jailed for the alleged probation violation. The charged was dismissed in March 2003.

28 In July 2003, plaintiff submitted a written claim in compliance with California

1 Government Code § 910.4. He claims to have received no response from defendants. In
2 November 2003, the Lake County Superior Court ordered the return of plaintiff's property,
3 including an "International Driver's License," with an expiration date of March 1, 2004. In
4 February 2004, plaintiff allowed his California driver's license to expire.

5 On February 12, 2004, plaintiff filed case No. C-04-0603 EDL in the U.S. District
6 Court, Northern District of California, against Lake County; Lake County Sheriff Rodney
7 Mitchell; Gary Luck; and Patrick McMahon.

8 In May 2004, plaintiff was stopped by Sergeant McMahon of the Lake County
9 Sheriff's Department. Plaintiff claims that although he was in possession of a "valid"
10 International Driver's License "issued from Honduras," he was nonetheless arrested and his
11 automobile was impounded. He was charged and found guilty. In September 2004,
12 plaintiff was stopped on two different occasions by officers of the Lake County Sheriff's
13 Department for driving without a license, and was charged and found guilty.

14 In February 2005, plaintiff notified the Social Security Administration that he was
15 "surrendering" the social security number that had been issued to him.

16 Also in February 2005, on two different occasions, plaintiff was stopped by Sergeant
17 McMahon of the Lake County Sheriff's Department for driving without a license, and was
18 stopped by the California Highway Patrol for violation of California Health & Safety Code
19 § 11358 (cultivation of marijuana), and California Vehicle Code § 23222 (possession of less
20 than one ounce of marijuana), § 22349(a) (driving over the speed limit), and
21 § 12500(a) (driving without a license).

22 In March 2005, plaintiff was stopped by Sergeant Chris Macedo of the Lake County
23 Sheriff's Department, and cited for driving without a license. His automobile was towed.
24 Plaintiff was subsequently found guilty of a misdemeanor charge of driving without a
25 license. He did not appeal the decision.

26 On May 9, 2005, the court granted defendants' motion for summary judgment in
27 Harris v. Lake County, Case No. C-04-0603 EDL. Judgment was entered on May 10,
28 2005. Plaintiff filed a notice of appeal.

1 In June 2005, plaintiff was found guilty on two charges of driving without a license (in
2 February 2005 and March 2005), and was sentenced to 60 days in the County Jail. On
3 June 14, 2005, “[w]hile appearing for” those two charges, plaintiff was again stopped by
4 Lake County Sheriff’s Officers for driving without a license. His automobile was
5 impounded, and another complaint was filed in case No. 905679, charging violation of
6 California Vehicle Code § 12500(a) (driving without a license). That charge was dismissed
7 on October 28, 2005.

8 Also in June 2005, plaintiff filed case No. C-05-2555 EDL in the U.S. District Court,
9 Northern District of California, against Lake County; the Lake County Board of Supervisors;
10 the Lake County Sheriff’s Department; Rodney Mitchell, Sheriff of Lake County; and
11 Sergeants Chris Macedo and Patrick McMahon of the Lake County Sheriff’s Department.
12 On February 17, 2006, pursuant to a request from plaintiff, the complaint was dismissed
13 without prejudice.

14 In March 2006, plaintiff filed a complaint with the “Board of Control” against the
15 California Department of Motor Vehicles. He claims that he received no response to this
16 complaint. Also in March 2006, plaintiff filed a claim with Lake County pursuant to
17 California Government Code § 911.2. This claim was rejected by Lake County in April
18 2006, on the ground that it was untimely under Government Code § 945.3. Plaintiff claims
19 that this denial of his claim was unconstitutional.

20 In November 2006, plaintiff acquired another automobile, a 1989 Dodge Caravan,
21 which he registered in his name “as the only way to release the previous owner from
22 liability with the automobile.”

23 On December 13, 2006, the judgment in case No. C-04-0603 EDL was affirmed by
24 the Ninth Circuit. See Harris v. Lake County, 2006 WL 3699049 (9th Cir., Dec. 13, 2006).

25 On January 18, 2007, plaintiff received a notice of “Intent to Suspend” from the
26 California Department of Motor Vehicles, advising him that the registration on his newly-
27 acquired 1989 Dodge Caravan would be suspended if plaintiff did not provide proof of
28 insurance. On February 7, 2007, the DMV did in fact suspend the registration of the 1989

1 Dodge Caravan.

2 On February 18, 2007, while driving in Sonoma County, plaintiff was stopped by an
3 officer of the Vallejo Police Department, and cited for violation of Vehicle Code § 22350
4 (unsafe speed), § 24601 (no license plate light), § 24525(a) (headlamp out), and
5 § 14601.1(a) (driving on suspended license). The officer detained plaintiff at the scene for
6 approximately 30-40 minutes. He also impounded the 1989 Dodge Caravan, and had it
7 towed.

8 On March 1, 2007, plaintiff received notice of a lien sale for the 1989 Dodge
9 Caravan. The lien sale was set for April 2, 2007. Plaintiff submitted an opposition to the
10 notice of lien sale, but was advised by the DMV that his opposition was untimely because it
11 was not properly submitted within 10 days of the original mailing. On April 2, 2007, plaintiff
12 filed the amended complaint in this action, apparently seeking some sort of injunctive relief
13 to halt the lien sale.

14 Plaintiff alleges claims under 42 U.S.C. § 1983 for violation of his rights under the
15 United States Constitution, and also alleging claims under the California Constitution and
16 the California Civil Code. Defendants are the California Business, Transportation and
17 Housing Agency ("BTH"); Barry Sedlik, alleged to be the "Director" of the BTH;¹ the
18 California Department of Motor Vehicles ("DMV"); George Valverde, Director of the DMV;
19 Lake County; the Lake County Sheriff's Department; the Lake County Board of Supervisors
20 (Ed Robey, Jeff Smith, Gary Lewis, Anthony Farrington, and Rob Brown); Rodney Mitchell,
21 Sheriff of Lake County; and Sergeants Chris Macedo and Pat McMahon of the Lake County
22 Sheriff's Department.

23 Plaintiff asserts seven causes of action. In the first cause of action, plaintiff alleges
24 that, in taking actions to enforce California Vehicle Code § 12500(a) beginning in June
25 2001, defendants violated the Religious Freedom Restoration Act of 1993, 42 U.S.C.

27 ¹ The website for the BTH identifies Dale E. Bonner as the Secretary of BTH. Barry
28 Sedlik is identified as Undersecretary for Economic Development and a Special Advisor. See
<http://www.bth.ca.gov/contactus/index.asp> (last visited April 17, 2007).

1 § 2000bb-1 ("RFRA"), and also violated his rights under the First Amendment to the United
2 States Constitution, and California Civil Code §§ 51(e)(3), 51(7), and 52.1

3 In the second cause of action, plaintiff alleges that, in taking actions to enforce
4 Vehicle Code § 12500(a) beginning in June 2001, defendants violated his rights under the
5 First and Fourth Amendments to the United States Constitution, and also violated Civil
6 Code §§ 51(e)(3), 51(7), and 52.1.

7 In the third cause of action for false arrest, plaintiff alleges that, in arresting him on
8 June 14, 2005, jailing him, and filing charges for violations of Vehicle Code § 12500(a),
9 defendants violated Article 1, §§ 1, 2, 8, 11, 19, and 21 of the California Constitution;
10 violated his rights under the Fourth, Fifth, and Sixth Amendments to the United States
11 Constitution; and violated Civil Code §§ 51(e)(3), 51.7, and 52.1.

12 In the fourth cause of action for false imprisonment, plaintiff alleges that defendants
13 falsely arrested him on June 14, 2005, in violation of his rights under Article 1, §§ 1, 2, 8,
14 11, 19, and 21 of the California Constitution; the Fourth, Fifth, and Sixth Amendments to
15 the United States Constitution; and Civil Code §§ 51(e)(3), 51.7, and 52.1.

16 In the fifth cause of action for malicious prosecution, plaintiff alleges that defendants'
17 practices and procedures which caused him to be prosecuted during the period from June
18 14, 2005, through October 28, 2005, constituted a violation of his rights under Article 1, §§
19 1, 2, 8, 11, 19, and 21 of the California Constitution; the Fourth Amendment to the United
20 States Constitution; and Civil Code §§ 51(e)(3), 51.7, and 52.1.

21 In the sixth cause of action for false arrest, plaintiff alleges that in arresting him "on
22 and through the period of June 2001 to the present day," for violations of Vehicle Code
23 § 12500(a), defendants violated Article 1, §§ 1, 2, 8, 11, 19, and 21 of the California
24 Constitution; violated his rights under the Fourth, Fifth, and Sixth Amendments to the
25 United States Constitution; and violated Civil Code §§ 51(e)(3), 51.7, and 52.1.

26 In the seventh cause of action for false imprisonment, plaintiff alleges defendants'
27 practices and procedures which caused him to be prosecuted "on and through the period of
28 June 2001 to present day," constituted a violation of his rights under Article 1, §§ 1, 2, 8,

11, 19, and 21 of the California Constitution; the Fourth Amendments to the United States Constitution; and Civil Code §§ 51(e)(3), 51.7, and 52.1.

In the eighth cause of action for malicious prosecution, plaintiff alleges that defendants' practices and procedures which caused him to be prosecuted "through the period of June 2001 thru to present day," constituted a violation of his rights under Article 1, §§ 1, 2, 8, 11, 19, and 21 of the California Constitution; the Fourth Amendment to the United States Constitution; and Civil Code §§ 51(e)(3), 51.7, and 52.1.

In the ninth cause of action for malicious prosecution, plaintiff alleges that the practices and procedures implemented by defendant BTH (which also includes defendant DMV, defendant George Valverde, and defendant Barry Sedlik) caused plaintiff to be unlawfully prosecuted "during the period of January 2007 through to present day," in violation of his rights under Article 1, §§ 1, 2, 8, 11, 19, and 21 of the California Constitution; the Fourth Amendments to the United States Constitution; and Civil Code §§ 51(e)(3), 51.7, and 52.1.

Plaintiff seeks compensatory damages, and injunctive relief.²

DISCUSSION

A. Request for Leave to Proceed In Forma Pauperis

1. Legal Standard

The court may authorize a plaintiff to file an action in federal court without prepayment of fees or security if the plaintiff submits an affidavit showing that he or she is unable to pay such fees or give security therefor. 28 U.S.C. § 1915(a). When a complaint is filed in forma pauperis, it must be dismissed prior to service of process if it is frivolous or malicious, fails to state a claim, or seeks monetary damages from defendants who are immune from suit. See 28 U.S.C. § 1915(e)(2); see also Franklin v. Murphy, 745 F.2d 1221, 1226-27 (9th Cir. 1984). When a complaint is dismissed under § 1915(e), the plaintiff

² The caption of the first amended complaint states that it is an "amended complaint for declaratory, injunctive, and compensatory relief," but plaintiff does not actually request any declaratory relief and does not plead any facts showing entitlement to such relief.

1 should be given leave to amend the complaint with directions as to curing its deficiencies,
2 unless it is clear from the face of the complaint that the deficiencies could not be cured by
3 amendment. See Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (dismissal of
4 complaint as frivolous).

5 A complaint is frivolous for purposes of § 1915(e) if it lacks any arguable basis in fact
6 or in law. Neitzke v. Williams, 490 U.S. 319, 328-30 (1989). A complaint lacks an arguable
7 basis in law only if controlling authority requires a finding that the facts alleged fail to
8 establish an arguable legal claim. Guti v. INS, 908 F.2d 495, 496 (9th Cir. 1990). While
9 the facts alleged in the complaint should generally be accepted as true for purposes of
10 entering judgment on the pleadings, clearly baseless factual contentions may be dismissed
11 as frivolous under § 1915. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

12 2. Analysis

13 a. Requirements of Rule 8(a).

14 As an initial matter, the court finds that the complaint generally fails to put each
15 defendant on notice of the claim or claims asserted against such defendant. Under Federal
16 Rule of Civil Procedure 8, a complaint "shall contain . . . a short and plain statement of the
17 claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Under this federal
18 "notice pleading" standard, the complaint must give the defendant "fair notice of what the
19 plaintiff's claim is and the grounds upon which it rests. Swierkiewicz v. Sorema N.A., 534
20 U.S. 506, 512 (2002). Put another way, a plaintiff is required to include in a complaint
21 "sufficient allegations to put defendants fairly on notice of the claims against them."
22 McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991).

23 In the present case, with the exception of the ninth cause of action, plaintiff does not
24 allege facts constituting a specific claim against any specific defendant. Instead, he alleges
25 his claims against "defendants." In so doing, plaintiff fails to clarify which defendant or
26 defendants committed which alleged wrong. Plaintiff must plead facts showing the
27 connection between the actions he attributes to each defendant, and the claim or claims he
28 asserts against that defendant.

2. Limitation of Action

All claims asserted by plaintiff in this action, including the claims for constitutional violations, are governed by California's two-year statute of limitations for personal injury, which is codified at California Code of Civil Procedure § 335.1. See, e.g., Wilson v. Garcia, 471 U.S. 261, 276 (1985) (section 1983 claim is governed by forum state's statute of limitations for personal injury actions); Gatto v. County of Sonoma, 98 Cal. App. 4th 744, 760 (2002) (constitutional tort asserted under California Constitution is governed by California's statute of limitations for personal injury). Thus, because the complaint in this action was filed on January 23, 2007, any claim based on events that occurred prior to January 23, 2005, must be dismissed as untimely.³

The court notes further, with specific reference to the claims of false arrest, that "the statute of limitations upon a § 1983 claim seeking damages for false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process." Wallace v. Kato, 127 S.Ct. 1091, 1100 (2007).⁴

3. Claims Against California Agencies

Plaintiff alleges claims against the California Business, Transportation, and Housing Agency, and against the California Department of Motor Vehicles, a department of the BTH. The Eleventh Amendment bars from the federal courts suits against a state by its own citizens, citizens of another state or citizens or subjects of any foreign state. See Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 237-38 (1985); Alabama v. Pugh, 438 U.S. 781, 782 (1978). This includes state law claims brought against a state in federal court under the supplemental jurisdiction statute, 28 U.S.C. § 1367. See Raygor v. Regents of Univ. of Minnesota, 534 U.S. 533, 541-42 (2002). This Eleventh Amendment

³ Moreover, any claims previously asserted by plaintiff in Harris v. Lake County, Case No. C-04-0603 EDL, which was filed on February 12, 2004, would be barred by the doctrine of res judicata.

⁴ By contrast, limitations begin to run against an action for false imprisonment when the alleged false imprisonment ends. Id. at 1095-96.

immunity also extends to suits against a state agency. See, e.g., Simmons v. Sacramento County Superior Court, 318 F.3d 1156,1161 (9th Cir. 2003).

Unless a state has waived its Eleventh Amendment immunity or Congress has overridden it, a state cannot be sued regardless of the relief sought. See Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985); Confederated Tribes & Bands v. Locke, 176 F.3d 467, 469 (9th Cir. 1999). Consent to suit by the state “is effective ‘only where stated by the most express language.’” Yakama Nation v. Washington Dept. of Revenue, 176 F.3d 1241, 1245 (9th Cir. 1999) (quoting Port Auth. Trans-Hudson Corp. v. Feeney, 495 U.S. 299, 305 (1990)). Here, the State of California has not consented to be sued in federal court with regard to the claims asserted by plaintiff, and the claims against the BTH and the DMV must be dismissed.

4. Claims Against Individuals Employed by the State of California

Suits under 42 U.S.C. § 1983 against government officials in their official capacities are really suits against the government employer because the employer must pay any damages awarded. Butler v. Elle, 281 F.3d 1014, 1023 (9th Cir. 2002). In such suits, the real party in interest is the entity for which the official works. Hafer v. Melo, 502 U.S. 21, 25 (1991). A federal action for monetary damages against an individual state official acting in his official capacity is thus barred by the Eleventh Amendment. Doe v. Lawrence Livermore Nat’l Lab., 131 F.3d 836, 839 (9th Cir. 1997). Thus, the claims for damages against Barry Sedlik and George Valverde, for actions taken in their official capacities, must be dismissed.

The Eleventh Amendment does not bar suits against state officials in their individual capacities. Hafer, 502 U.S. at 31. In this case, however, plaintiff has not pled any facts showing any actions taken against him under color of state law by Barry Sedlik or George Valverde, which caused a deprivation of constitutional rights. The sole mention of Sedlik in the amended complaint is under the description of the parties, where plaintiff alleges that Sedlik “hold[s] title as Acting Secretary, with assigned duties including . . . being responsible for the creation of, and/or the enforcement of, and/or the disbursement of,

1 and/or the authorizing of the dispersal of administrative policy for the BTH[] to its
2 employees upon authority of state law” and that Sedlik is responsible for “training,
3 supervision, and discipline of” BTH employees.

4 The sole mention of Valverde in the amended complaint is, again, under the
5 description of the parties, where plaintiff alleges that Valverde is the Director of the DMV,
6 “with assigned duties including . . . being responsible for the creation of, and/or the
7 enforcement of, and/or, the disbursement of, and/or the authorizing of the dispersal of
8 administrative policy for the DMV to its employees upon authority of state law,” and that
9 Valverde is also responsible for the “training, supervision, and discipline of” the DMV
10 employees.

11 While it is true that a supervisor may be held liable in his individual capacity for his
12 own culpable action or inaction in the training, supervision or control of his subordinates,
13 see Watkins v. City of Oakland, Cal., 145 F.3d 1087, 1093 (9th Cir. 1998), or may be held
14 liable if he or she implemented a policy so deficient that the policy itself is a repudiation of
15 constitutional rights and is the moving force of the constitutional violation, see Redman v.
16 County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc), there is no
17 respondeat superior liability under 42 U.S.C. § 1983. Polk Co. v. Dodson, 454 U.S. 312,
18 325 (1981); Monell v. Dep't of Social Services, 436 U.S. 658, 692 (1978).

19 Moreover, vague and conclusory allegations of official participation in civil rights
20 violations are not sufficient to state a claim. Ivey v. Bd. of Regents of Univ. of Alaska, 673
21 F.2d 266, 268 (9th Cir. 1982). An individual's general responsibility for supervising the
22 operations of a state agency or department is insufficient to establish personal involvement.
23 See Ouzts v. Cummins, 825 F.2d 1276, 1277 (8th Cir. 1987). Here, the allegations
24 regarding Barry Sedlik and George Valverde are inadequate in light of the rule that “a
25 plaintiff must allege facts, not simply conclusions, that show that an individual was
26 personally involved in the deprivation of his civil rights.” Barren v. Harrington, 152 F.3d
27 1193, 1194 (9th Cir. 1998).

28 A suit against a state official seeking prospective injunctive relief from

1 unconstitutional state action is not a suit against the state, even if the state is the real party
2 in interest. Kentucky v. Graham, 473 U.S. at 167 n.14; Ex parte Young, 209 U.S. 123, 159-
3 60 (1908); see also Armstrong v. Wilson, 124 F.3d 1019, 1026 (9th Cir. 1997). Thus, in
4 theory, assuming plaintiff can state a claim against Barry Sedlik and George Valverde, he
5 could also seek prospective injunctive relief in connection with those claims. As explained
6 below, however, in the discussion of the motion for preliminary injunction, the injunctive
7 relief plaintiff seeks is not available to him, as against any defendant.

8 5. RFRA Claim

9 Plaintiff alleges that defendants' actions in enforcing the provisions of Vehicle Code
10 § 12500(a) against him violated the Religious Freedom Restoration Act. RFRA provides, in
11 relevant part, that "Government shall not substantially burden a person's exercise of
12 religion even if that burden results from a rule of general applicability [subject to exceptions
13 not relevant here]." 42 U.S.C. § 2000bb-1(a). RFRA requires the government to justify any
14 regulation imposing a burden on the free exercise of religion by showing that the regulation
15 satisfies strict scrutiny. Worldwide Church of God v. Philadelphia Church of God, Inc., 227
16 F.3d 1110, 1120 (9th Cir. 2000).

17 In City of Boerne v. Flores, 521 U.S. 507 (1997), the Supreme Court held that RFRA
18 exceeded the authority of Congress under § 5 of the Fourteenth Amendment to enforce the
19 First Amendment. The Ninth Circuit, along with most other courts, has concluded that the
20 Supreme Court invalidated RFRA only as applied to actions by state and local government.
21 San Jose Christian College v. City of Morgan Hill, 360 F.3d 1024, 1030 n.3 (9th Cir. 2004).

22 Accordingly, as there are no claims asserted against any federal defendant in this
23 case, the claim that defendants' enforcement of state or local law violates RFRA must be
24 dismissed.

25 6. Federal Constitutional Claims

26 Plaintiff alleges that "defendants" violated his rights under the First, Fourth, Fifth, and
27 Sixth Amendments to the U.S. Constitution. Title 42 U.S.C. § 1983 "provides a cause of
28 action for the 'deprivation of any rights, privileges, or immunities secured by the

1 Constitution and laws' of the United States." Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498,
 2 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of substantive
 3 rights, but merely provides a method for vindicating federal rights elsewhere conferred.
 4 See Graham v. Connor, 490 U.S. 386, 393-94 (1989). To state a claim under § 1983, a
 5 plaintiff must allege two essential elements: (1) that a right secured by the Constitution or
 6 laws of the United States was violated and (2) that the alleged violation was committed by a
 7 person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988);
 8 Ketchum v. Alameda County, 811 F.2d 1243, 1245 (9th Cir. 1987).

9 a. Free exercise of religion

10 Under California law, an individual applying for a driver's license or DMV
 11 identification card is required to provide his or her social security number. Cal. Veh. Code
 12 §§ 1653.5, 12801. Plaintiff claims that his religion forbids the use of social security
 13 numbers, and, as the court understands the allegations, asserts either that his religion
 14 forbids the use of the California driver's license because an applicant for a driver's license
 15 must provide a social security number, or that it would be impossible for him to apply for a
 16 driver's license because of the requirement that he provide a social security number. In
 17 any event, he alleges that the enforcement of Vehicle Code § 12500(a) – which makes it
 18 unlawful for an unlicensed driver to operate a motor vehicle – violates his right to free
 19 exercise of religion guaranteed by the First Amendment.

20 In Employment Division v. Smith, 494 U.S. 872 (1990), the Supreme Court analyzed
 21 a free exercise of religion claim under the rational basis test. Under this test, a rationally-
 22 based, neutral law of general applicability does not violate the right to free exercise of
 23 religion even though the law incidentally burdens a particular religious belief or practice. Id.
 24 at 879. The Court held that the right of free exercise "does not relieve an individual of the
 25 obligation to comply with a valid and neutral law of general applicability on the ground that
 26 the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." Id.

27 There is no question that California may regulate driver's licenses. See Miller v.
 28 Reed, 176 F.3d 1202, 1206-07 (9th Cir. 1999). Vehicle Code § 1653.5, which mandates

1 the provision of a social security number by an applicant for a California driver's license,
2 meets the rational basis test. It is a religion-neutral law of general applicability. Id. at 1207.
3 Under Smith, the enforcement of this law does not violate plaintiff's right to the free
4 exercise of religion. Id. Accordingly, the court finds that the first amended complaint fails
5 to state a claim for violation of plaintiff's rights under the First Amendment.

6 b. False arrest and false imprisonment

7 In the third and sixth causes of action, plaintiff alleges that defendants falsely
8 arrested him "upon fictitious criminal charges" under Vehicle Code § 12500(a). The third
9 cause of action relates to the incident on June 14, 2005, when plaintiff was "stopped" and
10 cited for driving without a license, and the sixth cause of action relates to arrests "on and
11 through the period of June 2001 to the present day."

12 In the fourth and seventh causes of action, plaintiff alleges that defendants falsely
13 imprisoned him "upon fictitious criminal charges" under Vehicle Code § 12500(a). The
14 fourth cause of action relates to the incident on June 14, 2005, and the seventh cause of
15 action relates to alleged false imprisonment "on and through the period of June 2001 to the
16 present day."

17 The allegations of unlawful arrest and false imprisonment in the sixth and seventh
18 causes of action are apparently references to the arrest in December 2001, subsequent to
19 which plaintiff "agreed to accept the summary court probation offered by the court, and
20 reapplied for a 'California State driver's license' as ordered by the . . . Lake County
21 Superior Court;" the arrest in December 2002, subsequent to which plaintiff was jailed for
22 four days and then released on \$2500 bond; and the arrest in February 2003 for probation
23 violation. The allegation of false arrest may also include plaintiff's detention for 30 to 40
24 minutes on February 18, 2007.

25 Because any claims relating to false arrest or false imprisonment prior to January
26 23, 2005, are time-barred, and because there is no indication that the criminal charges
27 stemming from the February 18, 2007, incident have been dismissed, the court finds that
28 any actionable portion of the sixth cause of action essentially duplicates the third cause of

1 action, and that any actionable portion of the the seventh cause of action essentially
2 duplicates the fourth cause of action. Accordingly, the sixth and seventh causes of action
3 must be dismissed on that basis.

4 In the third and fourth causes of action, plaintiff alleges that he was falsely arrested
5 and imprisoned in violation of his Fourth Amendment right to be free from unlawful
6 seizures.³ Plaintiff appears to be asserting, as a basis for the false arrest and false
7 imprisonment claims, that he was stopped on June 14, 2006, and cited for driving without a
8 license, and that the charges stemming from the June 14, 2006, citation were later
9 dismissed by the Lake County Superior Court.⁴

10 The Fourth Amendment proscribes "unreasonable searches and seizures." U.S.
11 Const. amend. IV; Allen v. City of Portland, 73 F.3d 232, 235 (9th Cir. 1995). A claim of
12 unlawful arrest is cognizable under § 1983 for violation of the Fourth Amendment's
13 prohibition against unreasonable search and seizure if the allegation is that the arrest was
14 without probable cause or other justification. See Pierson v. Ray, 386 U.S. 547, 555-58
15 (1967); see also Allen, 73 F.3d at 235 (existence of probable cause is a major factor in
16 determining reasonableness of search or seizure). Where an initial arrest is invalid, a claim
17 for unlawful detention may be cognizable under § 1983. See Lee v. County of Los
18 Angeles, 250 F.3d 668, 684-85 (9th Cir. 2001).

19 Probable cause means "more than a bare suspicion; it exists when the officer's
20 knowledge of reasonably trustworthy information is sufficient to warrant a prudent person to
21 believe that an offense has been or is being committed." Graves v. City of Coeur D'Alene,
22 339 F.3d 828, 841 (9th Cir. 2003) (citation omitted). In the case of an arrest, probable
23 cause exists when, under the totality of the circumstances known to the arresting officers, a
24 prudent person would have concluded that there was a fair probability that the suspect had
25 committed a crime. Peng v. Penghu, 335 F.3d 970, 976 (9th Cir. 2003) (citation and
26

27 ³ Plaintiff also asserts Fifth and Sixth Amendment violations in connection with the
28 alleged false arrest and false imprisonment, but does not plead any supporting facts.

⁴ He does not state why the charges were dismissed.

1 quotation omitted).

2 In addition to probable cause, in order for an arrest to be reasonable for Fourth
3 Amendment purposes the arresting officer must be “authorized by state and or municipal
4 law to effect a custodial arrest for the particular offense.” Pierce v. Multnomah County,
5 Oregon, 76 F.3d 1032, 1041 (9th Cir. 1996) (citation omitted). Under Vehicle Code
6 § 12801.5(e), a police officer is not entitled to arrest someone solely for being an
7 unlicensed driver. If plaintiff had been arrested on June 14, 2005, solely because he was
8 an unlicensed driver, the arresting officer would not have had probable cause to arrest him.
9 See Bingham v. Schreiber, 341 F.3d 939, 949-50 (9th Cir. 2003) (where California Vehicle
10 Code prohibits arresting someone solely for being an unlicensed driver, such arrest is not
11 an action that a reasonable official could have believed lawful).

12 However, plaintiff does not allege that he was arrested on June 14, 2005, or that he
13 was jailed on that date.⁵ In the first amended complaint, plaintiff asserts that he was
14 “stopped” on June 14, 2005, by Sergeants Macedo and McMahon, and that his automobile
15 was “towed on the allegation that plaintiff was an ‘unlicensed driver.’” FAC ¶ 58. In
16 general, the decision to stop an automobile is reasonable where the police have probable
17 cause to believe that a traffic violation has occurred. Whren v. United States, 517 U.S.
18 806, 810 (1996). Moreover, the Fourth Amendment requires only “reasonable suspicion” in
19 the context of investigative traffic stops, because the usual traffic stop is more analogous
20 to a so-called “Terry stop” than to a formal arrest. Berkemer v. McCarty, 468 U.S. 420, 439
21 (1984); see also United States v. Lopez-Soto, 205 F.3d 1101, 1104-05 (9th Cir. 2000).

22 If plaintiff intends to assert that the traffic stop on June 14, 2005, constituted “false
23 arrest,” he must, at a minimum, allege that the officers that stopped him had no reasonable
24 suspicion to believe that a traffic violation had occurred. He must also clarify which
25 defendants this claim is being asserted against. As for the claim of false imprisonment,
26 plaintiff has alleged no facts supporting that claim.

27
28 ⁵ The only arrests for driving without a license are alleged to have occurred in December 2001 and December 2002.

c. Malicious prosecution

In the fifth, eighth, and ninth causes of action, plaintiff alleges that defendants implemented certain practices and procedures that caused him to be unlawfully arrested, imprisoned, and criminally prosecuted. The fifth cause of action relates to the period June 14, 2005, through October 28, 2005; the eighth cause of action relates to the period from June 2001 to the present day; and the ninth cause of action relates to the period from January 2007 to the present day.

In line with the discussion of the causes of action for false arrest and false imprisonment, and the discussion of the statute of limitations for constitutional torts, the allegations in the eighth cause of action relating to events occurring before January 23, 2005, are stricken because any claims based on such events are time-barred. In addition, the ninth cause of action fails to state a claim because there is no indication in the facts as pled that the charges stemming from the February 18, 2007, incident have been dismissed.

To state a claim under § 1983 for malicious prosecution, the plaintiff must plead facts showing that the defendants prosecuted him with malice and without probable cause, and that they did so for the purpose of depriving him of a specific constitutional right. Awabdy v. City of Adelanto, 368 F.3d 1062, 1066-70 (9th Cir. 2004). Malicious prosecution actions are not limited to suits against prosecutors but may be brought against other persons who have wrongfully caused the charges to be filed. Id. at 1066 (citing Galbraith v. County of Santa Clara, 307 F.3d 1119, 1126-27 (9th Cir. 2002)).

Here, plaintiff has not alleged that he was prosecuted without probable cause, or that he was prosecuted for the purpose of depriving him of a specific constitutional right. Accordingly, the court finds that the first amended complaint fails to state a claim under § 1983 for malicious prosecution.

7. Claims under the California Constitution

Plaintiff asserts violations of his rights under Article 1, §§ 1, 2, 4, 8, 11, 19, and 21 of the California Constitution, but he has not alleged facts supporting any of those claims, with the possible exception of the claims under §§ 1 and 4.

1 Section 1 protects the right to life and liberty, the right to property, the right to safety,
2 the right to happiness, and the right to privacy. The only facts that suggest a possible basis
3 for a § 1 claim are allegations that plaintiff's car was towed after he was stopped for driving
4 without a license on February 16, 2005, March 15, 2005, and June 14, 2005. However,
5 plaintiff has not asserted facts showing that the towing was unconstitutional.

6 Section 4 protects the free exercise of religion and forbids any law respecting an
7 establishment of religion. Plaintiff's claim that the law requiring that motor vehicles be
8 driven only by licensed and insured drivers violates his right to free exercise of religion
9 arguably supports the § 4 claim. The California Supreme Court has not clearly articulated
10 the standard to be used for challenges to neutral, generally applicable laws under the
11 California Constitution's free exercise clause. See Catholic Charities of Sacramento, Inc. v.
12 Superior Court, 32 Cal. 4th 527, 559-60 (2004). However, the California Court of Appeal
13 ruled in a 1999 decision that the requirements imposed by Vehicle Code § 1653.5 and §
14 12801 do not violate the free exercise clause. Brunson v. Dep't of Motor Vehicles, 72 Cal.
15 App. 4th 1251, 1255 (1999).

16 The court also finds that the § 4 free exercise claim must be dismissed for a
17 secondary reason. Plaintiff cannot challenge California laws on the basis that they violate
18 California's free exercise clause by filing suit against Lake County and the Lake County
19 Sheriff's Officers based on their enforcement of valid provisions of the California Vehicle
20 Code. Any such claim must be directed to the State of California, but such a suit cannot be
21 maintained in federal court because of the requirements of the Eleventh Amendment.

22 The remaining state constitutional claims are not supported by any facts. Plaintiff
23 alleges no facts supporting a claim under § 2, which provides for liberty of speech and
24 freedom of the press; no facts supporting a claim under § 8, which provides that a person
25 may not be disqualified from entering or pursuing a profession or employment because of
26 sex, race, creed, color, or national origin; no facts supporting a claim under § 11, which
27 preserves the right of habeas corpus; no facts supporting a claim under § 19, which
28 provides for just compensation when private property is taken for public use by eminent

1 domain; and no facts supporting a claim under § 21, which provides that property held by
2 an individual before marriage, or acquired during marriage by gift, will, or inheritance, is
3 separate property. Accordingly, those claims must be dismissed for failure to state a claim.

4 8. Claims under the California Civil Code

5 Plaintiff alleges violations of California Civil Code §§ 51(e)(3), 51.7, and 52.1 in each
6 of his nine causes of action. Civil Code § 51 is part of California's Unruh Civil Rights Act,
7 which provides, in part, that

8 [a]ll persons within the jurisdiction of this state are free and equal, and no
9 matter what their sex, race, color, religion, ancestry, national origin, disability,
10 medical condition, marital status, or sexual orientation, are entitled to the full
and equal accommodations, advantages, facilities, privileges, or services in
all business establishments of every kind whatsoever.

11 Cal. Civ. Code § 51(b). Section 51(e)(3) simply provides a definition of "religion," stating
12 that it "includes all aspects of religious belief, observance, and practice."

13 For purposes of the present action, the crucial element of the Unruh Act is that it
14 secures equal access to public accommodations and prohibits discrimination by "business
15 establishments." None of the defendants named in plaintiff's complaint is a "business
16 establishment," and none of plaintiff's claims assert that he was denied access to a "public
17 accommodation. Accordingly, plaintiff has not stated a claim under the Unruh Act.

18 Civil Code § 51.7 prohibits "violence, or intimidation by threat of violence . . .
19 because of . . . race, color, religion, ancestry, national origin, political affiliation, sex, sexual
20 orientation, age, disability, or position in a labor dispute." A plaintiff must allege actual
21 violence or threat of violence to state a claim under § 51.7. Winarto v. Toshiba America
22 Elec. Components, Inc., 274 F.3d 1276, 1289 (9th Cir. 2001). Plaintiff has alleged no facts
23 showing any violence or any threat of violence by any defendant. Thus, the § 51.7 claim
24 must be dismissed.

25 Civil Code § 52.1 creates a cause of action against anyone who "interferes by
26 threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or
27 coercion, with the exercise or enjoyment by any individual or individuals of rights secured
28 by the Constitution or laws of the United States, or of the rights secured by the Constitution

or laws of [California].” As with the § 51.7 claim, plaintiff has not alleged any facts showing threats, intimidation, or attempts to interfere with any of his constitutional or legal rights, and the claim must be dismissed.

9. Request for Attorney’s Fees

Finally, the court finds that plaintiff’s request for attorney’s fees must be stricken. The case law is clear that pro se litigants are not entitled to an award of attorneys fees. See Kay v. Ehrler, 499 U.S. 432, 436-37 (1991); see also Corrigan v. United States, 27 F.3d 436, 438-39 (9th Cir. 1994) (purpose of statute permitting award of fees is to enable litigant to obtain assistance of counsel); Manos v. U.S. Dept. of the Air Force, 829 F. Supp. 1191, 1193-94 (N.D. Cal. 1993) (pro se litigant not entitled to attorney’s fees because such fees were not actually incurred).

B. Motion for Preliminary Injunction

1. Legal Standard

To prevail on a motion for preliminary injunction, plaintiff must show (1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases). See Rodde v. Bonta, 357 F.3d 988, 994 (9th Cir. 2004). Alternatively, injunctive relief can be granted if the plaintiff “demonstrate[s] . . . a combination of probable success on the merits and the possibility of irreparable injury.” Id.

A heightened standard is applied where the moving party seeks to enjoin governmental action taken in the public interest pursuant to a statutory or regulatory scheme. NAACP, Inc. v. Town of East Haven, 70 F.3d 219, 223 (2d Cir. 1995). To obtain injunctive relief against governmental activity, the plaintiff must show a persistent pattern of conduct violative of his/her rights. City of Los Angeles v. Lyons, 461 U.S. 95, 104 (1983).

2. Plaintiff’s Motion

Plaintiff seeks a preliminary injunction “enjoining [d]efendants from arresting, prosecuting, and/or from seizing plaintiff during the pendency of this action.” He also seeks

1 permanent injunctive relief.

2 Plaintiff asserts that certain “acts and practices” implemented by defendants are
3 designed to deprive plaintiff of his right to “travel,” and his religious freedom to be “free from
4 the need of government identification (mark of the beast) and/or permission.” Plaintiff
5 appears to be arguing that the enforcement of Vehicle Code § 12500(a) by Sheriff’s
6 Officers McMahon and Macedo – specifically, the arrest of plaintiff for driving a motor
7 vehicle without a license – violates his rights under the United States Constitution.

8 Plaintiff asserts that he has a fundamental right to travel, and that this right is
9 violated either by the requirement that he be a licensed driver or by the requirement that he
10 comply with the state’s requirements for becoming a licensed driver, including the
11 requirement that he provide a social security number. Presumably, he intends to assert the
12 latter, as he alleges in the complaint that he was in possession of an International Driver’s
13 Permit or License at various times in the past when he was arrested for driving without a
14 valid license.

15 Plaintiff also contends that the enforcement of Vehicle Code § 12500(a) against him
16 has caused him irreparable harm. He argues that defendants’ interference with his right to
17 “travel” interferes with his ability to obtain medical marijuana for his personal medical and
18 spiritual uses. He claims that defendants’ “practices” have caused him to be subjected to
19 physical agony, as he is “unable to ‘travel’ on the public roadways to acquire his medication
20 without the fear of arrest, seizure, and/or prosecution from defendants.” He also contends
21 that defendants’ interference with his ability to “travel” deprives him of his ability to practice
22 his religion at his “worship site of choice.”

23 The court finds that the motion must be DENIED. First, while plaintiff has argued at
24 length regarding the irreparable harm he has allegedly suffered and will continue to suffer
25 in the absence of injunctive relief, he has not provided a single argument showing a
26 likelihood of success on the merits of any of the claims alleged in the first amended
27 complaint.

28 Plaintiff has been arrested, on numerous occasions, for driving a motor vehicle

1 without a driver's license. In Harris v. Lake County, C-04-0603 EDL, he argued that Lake
2 County, the Sheriff of Lake County, the District Attorney of Lake County, and the Lake
3 County Board of Supervisors violated his constitutional right to travel by requiring that he
4 obtain a California driver's license. The court granted summary judgment for defendants
5 on that claim.

6 In the present motion, plaintiff again argues that the enforcement of Vehicle Code
7 § 12500(a) violates his constitutional right to travel (though this allegation does not appear
8 in the first amended complaint). The Supreme Court has long recognized a fundamental
9 right to interstate travel. United States v. Guest, 383 U.S. 745, 757-58 (1966). However,
10 "[b]urdens on a single mode of travel do not implicate the right to interstate travel." Miller,
11 176 F.3d at 1205. Moreover, there is no "fundamental right to drive." Id. at 1206. Plaintiff
12 remains free to travel anywhere he wishes – by airplane, train, or bus; as a passenger on a
13 motorcycle or in a private vehicle; or even by bicycle or on foot. The only restriction on his
14 ability to travel is that he is not permitted to operate a motor vehicle on the public streets
15 and highways of California unless he holds a valid driver's license and the vehicle is
16 insured.

17 Plaintiff's theory in the first amended complaint is that he cannot apply for a driver's
18 license because he does not want to provide the State with a social security number, and
19 he is unwilling to provide a social security number because it is against his religion.
20 However, the court has dismissed plaintiff's free exercise claims for failure to state a claim.
21 Thus, plaintiff cannot show likelihood of success on the merits.

22 Thus, for the reasons stated above in the discussion of plaintiff's claims under
23 § 1983, it is unlikely that plaintiff will prevail on his claims that the arrests for driving without
24 a license violated either his First Amendment right to free exercise of religion, or his Fourth
25 Amendment right to be free from unlawful seizures.

26 Plaintiff also argues in his motion for preliminary injunction that defendants'
27 "practices" violate his rights under the Ninth and Tenth Amendments to the U.S.
28 Constitution (though this allegation does not appear in the first amended complaint). The

1 Ninth Amendment protects against the infringement of fundamental rights that are not
2 specifically mentioned in the Constitution, such as the right to privacy. See, e.g., Griswold
3 v. Connecticut, 381 U.S. 479 (1965). However, plaintiff has identified no such fundamental
4 right.

5 Finally, the relief plaintiff seeks – an order enjoining “defendants” from detaining,
6 arresting and or prosecuting him at any time in the future – is beyond the jurisdiction of this
7 court. If plaintiff believes he has been arrested without probable cause, he may file an
8 action under 42 U.S.C. § 1983, subject to certain restrictions. If he believes he has been
9 wrongly convicted, his remedy lies in an appeal to the California Court of Appeal. But this
10 court cannot order “defendants” to refrain from future legal arrests and/or prosecutions.

11 CONCLUSION

12 In accordance with the foregoing, the complaint is hereby DISMISSED, the request
13 for leave to proceed IFP is DENIED, and the motion for preliminary injunction is DENIED.

14 The dismissal is with prejudice as to certain claims and with leave to amend as to
15 other claims, as follows.

16 1. All claims asserted against the BTH and the DMV are DISMISSED WITH
17 PREJUDICE, as are the claims against Barry Sedlik and George Valverde in their official
18 capacities.

19 2. The claims against Barry Sedlik and George Valverde in their individual
20 capacities are DISMISSED WITH LEAVE TO AMEND.

21 3. The claim under the First Amendment in the first cause of action and the
22 claim under the First and Fourth Amendments in the second cause of action are
23 DISMISSED WITH PREJUDICE.

24 4. The RFRA claim in the first cause of action is DISMISSED WITH
25 PREJUDICE.

26 5. The third cause of action for false arrest and the fourth cause of action for
27 false imprisonment are DISMISSED WITH LEAVE TO AMEND.

28 6. The fifth cause of action for malicious prosecution is DISMISSED WITH

1 LEAVE TO AMEND.

2 7. The sixth cause of action for false arrest and the seventh cause of action for
3 false imprisonment are DISMISSED WITH PREJUDICE.

4 8. The eighth cause of action for malicious prosecution is DISMISSED WITH
5 LEAVE TO AMEND.

6 9. The ninth cause of action for malicious prosecution is DISMISSED WITH
7 PREJUDICE.

8 10. The claims under Article 1, §§ 1, 2, 8, 11, 19, and 21 of the California
9 Constitution are DISMISSED WITH LEAVE TO AMEND to the extent that plaintiff can
10 allege facts to state a claim under those provisions. The claim under § 4 is DISMISSED
11 WITH PREJUDICE.

12 11. The claims under the California Civil Code are DISMISSED. The Unruh Act
13 claim is DISMISSED WITH PREJUDICE. The claims under §§ 51.7 and 52.1 are
14 DISMISSED WITH LEAVE TO AMEND.

15 12. The prayer for attorney's fees is STRICKEN.

16 Any amended complaint must comply with Rule 8(a), and must give each defendant
17 fair notice of the claims asserted against each such defendant. The amended complaint
18 must be filed no later than May 18, 2007. Failure to file an amended complaint within the
19 stated deadline will result in dismissal of the action, as will a failure to amend in accordance
20 with the instructions set forth herein.

21 The date for the initial case management conference, previously set for May 3,
22 2007, is VACATED.

23
24 **IT IS SO ORDERED.**

25 Dated: April 17, 2007



PHYLLIS J. HAMILTON
United States District Judge